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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GEORGIA DEFILIPPO, et al.,  
  
                                Plaintiffs,  
  
                                v.  
  
COUNTY OF STANISLAUS, et al.,  
  
                                Defendants.

No. 1:18-cv-00496-TLN-BAM

**ORDER**

This matter is before the Court on two Motions to Dismiss: (1) Defendants County of Stanislaus (“the County”), Birgit Fladager, Marlissa Ferreira, Kirk Bunch, David Harris, Dale Lingerfelt, Steve Jacobson, and Cory Brown’s (collectively, “County Defendants”) Motion to Dismiss (ECF No. 52); and (2) Defendants City of Modesto (“Modesto”) and Jon Evers’s (collectively, “Modesto Defendants”) Motion to Dismiss (ECF No. 66). Plaintiffs Georgia DeFilippo and Christina DeFilippo (collectively, “Plaintiffs”) oppose each motion. (ECF Nos. 55, 69.) Defendants filed replies. (ECF Nos. 61, 70.) For the reasons set forth below, the Court GRANTS Defendants’ motions.

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1           **I.       FACTUAL AND PROCEDURAL BACKGROUND**

2           On April 2, 2012, an individual named Korey Kauffman (“Kauffman”) was reported  
3 missing. (ECF No. 41 at 8.) On August 14, 2015, officers arrested a prominent criminal defense  
4 attorney named Frank Carson (“Carson”) on suspicion that he was involved in an elaborate  
5 murder to hire scheme that resulted in Kauffman’s murder. (*Id.* at 6.) Plaintiffs are Carson’s wife  
6 and stepdaughter, who were also arrested on charges related to the murder. (*Id.*) The charges  
7 against Plaintiffs were ultimately dismissed. (*Id.* at 14.) Plaintiffs allege Stanislaus County  
8 District Attorney Birgit Fladager and Chief Deputy District Attorney convened a task force  
9 composed of parties from the Stanislaus County District Attorney’s Office, Stanislaus County  
10 Sheriff’s Department, and the Modesto, Turlock, and Ceres Police Departments to wrongfully  
11 investigate and prosecute them for the purpose of destroying Carson. (*Id.* at 8.)

12           Plaintiffs filed the instant action on April 10, 2018. (ECF No. 1.) On September 12,  
13 2018, the Court stayed the action pending resolution of the underlying criminal case. (ECF No.  
14 23.) The Court lifted the stay on March 26, 2020. (ECF No. 40.) Plaintiffs filed the operative  
15 First Amended Complaint (“FAC”) on May 18, 2020, alleging various 42 U.S.C. § 1983 claims  
16 and state law claims. (ECF No. 41.) County Defendants filed a motion to dismiss on July 17,  
17 2020 (ECF No. 52) and Modesto Defendants filed a motion to dismiss on August 17, 2020 (ECF  
18 No. 66). Both of Defendants’ motions to dismiss are brought pursuant to Federal Rule of Civil  
19 Procedure (“Rule”) 12(b)(6), and each motion has been fully briefed.

20           **II.       STANDARD OF LAW**

21           A motion to dismiss for failure to state a claim upon which relief can be granted under  
22 Rule 12(b)(6) tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th  
23 Cir. 2001). Rule 8(a) requires that a pleading contain “a short and plain statement of the claim  
24 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a); *see also Ashcroft v. Iqbal*, 556  
25 U.S. 662, 677–78 (2009). Under notice pleading in federal court, the complaint must “give the  
26 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atlantic*  
27 *v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and quotations omitted). “This simplified  
28 notice pleading standard relies on liberal discovery rules and summary judgment motions to

1 define disputed facts and issues and to dispose of unmeritorious claims.” *Swierkiewicz v. Sorema*  
2 *N.A.*, 534 U.S. 506, 512 (2002).

3 On a motion to dismiss, the factual allegations of the complaint must be accepted as true.  
4 *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court must give the plaintiff the benefit of every  
5 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*  
6 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege  
7 “‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement to  
8 relief.” *Twombly*, 550 U.S. at 570 (internal citation omitted).

9 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of  
10 factual allegations.” *U.S. ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986).  
11 While Rule 8(a) does not require detailed factual allegations, “it demands more than an  
12 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A  
13 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the  
14 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at 678  
15 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
16 statements, do not suffice.”). Thus, “[c]onclusory allegations of law and unwarranted inferences  
17 are insufficient to defeat a motion to dismiss for failure to state a claim.” *Adams v. Johnson*, 355,  
18 F.3d 1179, 1183 (9th Cir. 2004) (citations omitted). Moreover, it is inappropriate to assume the  
19 plaintiff “can prove facts that it has not alleged or that the defendants have violated the . . . laws  
20 in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State*  
21 *Council of Carpenters*, 459 U.S. 519, 526 (1983).

22 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough  
23 facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim  
24 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
25 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at  
26 680. While the plausibility requirement is not akin to a probability requirement, it demands more  
27 than “a sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility  
28 inquiry is “a context-specific task that requires the reviewing court to draw on its judicial

1 experience and common sense.” *Id.* at 679. Thus, only where a plaintiff fails to “nudge [his or  
2 her] claims . . . across the line from conceivable to plausible[,]” is the complaint properly  
3 dismissed. *Id.* at 680 (internal quotations omitted).

4 If a complaint fails to state a plausible claim, “[a] district court should grant leave to  
5 amend even if no request to amend the pleading was made, unless it determines that the pleading  
6 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122,  
7 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995));  
8 see also *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in  
9 denying leave to amend when amendment would be futile). Although a district court should  
10 freely give leave to amend when justice so requires under Rule 15(a)(2), “the court’s discretion to  
11 deny such leave is ‘particularly broad’ where the plaintiff has previously amended its  
12 complaint[.]” *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir.  
13 2013) (quoting *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

### 14 III. ANALYSIS

15 The thrust of both of the instant motions to dismiss is that the FAC should be dismissed  
16 because Plaintiffs fail to clearly set forth factual allegations giving rise to each claim.  
17 Importantly, most of Plaintiffs’ claims against the entity Defendants and supervising Defendants  
18 seem to stem from the alleged conduct of the individual Defendants. As will be discussed, the  
19 Court agrees the FAC should be dismissed in its entirety pursuant to Rule 8 because the factual  
20 basis for each Defendants’ liability for each claim is unclear.

21 Rule 8 requires “each averment of a pleading to be ‘simple, concise, and direct.’” See  
22 *McHenry v. Renne*, 84 F.3d 1172, 1177–78 (9th Cir. 1996). To comply with Rule 8, a complaint  
23 should clearly and fully set forth “who is being sued, for what relief, and on what theory, with  
24 enough detail to guide discovery.” *Id.* at 1178. Even if the factual elements of a cause of action  
25 are present but are scattered throughout the complaint and not organized into a “short and plain  
26 statement of the claim,” dismissal for failure to satisfy Rule 8 is proper. *Id.* Further, “[t]he  
27 propriety of dismissal for failure to comply with Rule 8 does not depend on whether the  
28 complaint is wholly without merit.” *Id.* at 1179. Indeed, Rule 8(d)’s requirement that each

1 averment of a pleading be “‘simple, concise, and direct,’ applies to good claims as well as bad,  
2 and is a basis for dismissal independent of Rule 12(b)(6).” *Id.*

3 Shotgun pleading occurs when: (1) one party pleads that multiple parties did an act,  
4 without identifying which party did what specifically; or (2) when one party pleads multiple  
5 claims and does not identify which specific facts are allocated to which claim. *Hughey v.*  
6 *Camacho*, No. 2:13-CV-2665-TLN-AC, 2014 WL 5473184, at \*4 (E.D. Cal. Oct. 23, 2014)  
7 (citing *In re Mortgages Ltd.*, No. 2:08-bk-07465-RJH, 2013 WL 1336830, at \*12 (Bankr. D. Ariz.  
8 March 29, 2013); *Magulta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001)). In the instant case,  
9 the FAC does both of these things. More specifically, the FAC includes over 30 paragraphs of  
10 factual allegations that describe a wide variety of conduct by different individuals from different  
11 agencies. (ECF No. 41 at ¶¶ 21–55.) These allegations are later incorporated by reference within  
12 nine distinct causes of action which are asserted against multiple Defendants collectively and  
13 which list only the bare elements of each claim without designating which facts underlie which  
14 claim. (*Id.* at 18–25.) This lack of clarity permeates the entire FAC and is a sufficient basis for  
15 dismissal. *See Destfino v. Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011) (affirming a district court’s  
16 dismissal of an entire complaint that made “everyone did everything allegations” without leave to  
17 amend because “[t]he district court made clear . . . that plaintiffs must amend their ‘shotgun  
18 pleading’ to ‘state[ ] clearly how each and every defendant is alleged to have violated plaintiffs’  
19 legal rights” and plaintiffs failed to do so); *see also Bautista v. Los Angeles Cnty.*, 216 F.3d 837,  
20 840–841 (9th Cir. 2000) (affirming dismissal of a complaint with prejudice where the complaint  
21 failed to include short and plain statement of claim of each of the 51 plaintiffs and failed to state  
22 each plaintiff’s claim in separate count). The Court will address certain arguments from each of  
23 the pending motions to dismiss to illustrate the confusion.

24 A. County Defendants

25 County Defendants argue Plaintiffs fail to allege specific facts as to each individual’s role  
26 in each claim. (ECF No. 52-1 at 13.) For example, Plaintiffs sue Bunch, Jacobson, and  
27 Lingerfelt — criminal investigators for the Stanislaus County District Attorney’s Office — in  
28 their individual and official capacities. (ECF No. 41 at 5.) Plaintiffs also sue Brown — a

1 detective for the Stanislaus County Sheriff’s Department — in his individual and official  
2 capacity. (*Id.*) Plaintiffs specifically name: Bunch in Claims One, Two, Three, Four, and Eight;  
3 Lingerfelt in Claims Two, Three, Four, and Eight; Jacobson in Claims Two, Three, Four, and  
4 Eight; and Brown in Claims One, Two, Three, Four, and Eight. (*Id.* at 18–25.) Plaintiffs also  
5 bring Claims Six and Seven against “All Defendants,” which presumably includes Bunch,  
6 Jacobson, Brown, and Lingerfelt. (*Id.* at 22.)

7 County Defendants correctly argue Plaintiffs fail to include factual allegations specific to  
8 these individual Defendants within any claims. Although Plaintiffs argue there are sufficient  
9 allegations that the individual Defendants participated in multiple instances of unlawful conduct  
10 (ECF No. 55 at 24), the only Defendant-specific allegations Plaintiffs cite are as follows: Brown  
11 authored a warrant that made material omissions and intentional fabrications in order to secure  
12 Plaintiffs’ arrests (ECF No. 41 at ¶¶ 48); Bunch reviewed and may have authored the fabricated  
13 warrant and participated in coercing a statement by Robert Woody that he knew was false (*id.* at  
14 ¶¶ 33, 48); Lingerfelt was a direct participant in coercion of a statement by Robert Woody that  
15 Defendants knew was false (*id.* at ¶¶ 33, 51); and Jacobson participated in the fabrication of  
16 evidence by Robert Woody on multiple occasions, including through Woody’s mother (*id.* at ¶¶  
17 33, 40).<sup>1</sup>

18 Despite these various factual allegations in the background section of the FAC, Plaintiffs  
19 refer to the parties collectively in each claim and fail to cite any specific factual allegations as to  
20 “how each and every [D]efendant is alleged to have violated plaintiffs’ legal rights.” *Destfino*,  
21 630 F.3d at 958.

#### 22 B. Modesto Defendants

23 Modesto Defendants challenge all of Plaintiffs’ allegations but argue the allegations  
24 against Evers are particularly vague. (ECF No. 66 at 13.) Plaintiff sues Evers — a detective with  
25 the Modesto Police Department — in his individual and official capacities. (ECF No. 41 at 5.)  
26 Plaintiffs specifically name Evers (along with many other Defendants) in Claims Two, Three,  
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28 <sup>1</sup> Because the Court concludes the FAC does not satisfy Rule 8, the Court need not and does not address whether the allegations are sufficient to state a claim.

1 Four, and Eight. (*Id.* at 18–28.) As mentioned, Plaintiffs also bring Claims Six and Seven  
2 against “All Defendants,” which presumably includes Evers. However, Plaintiffs fail to allege  
3 any facts specific to Evers in these claims and refer to Defendants collectively. The only  
4 allegations specific to Evers in the FAC relate to his alleged coercion of Robert Woody’s false  
5 testimony (ECF No. 41 at ¶ 51) and his participation in fabrication of evidence and hiding  
6 evidence that a witness saw certain individuals beating up Kauffman (*id.* at ¶ 52). There are no  
7 allegations in the FAC specific to Modesto other than its relationship to Evers as his employer.  
8 Plaintiffs do not identify which of these facts apply to which of the distinct claims brought against  
9 Evers and Modesto, nor do they explain how these facts support each claim. *Destfino*, 630 F.3d  
10 at 958.

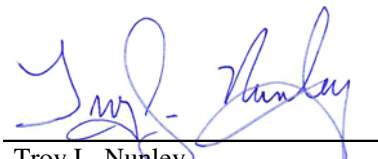
11 In sum, this is an impermissible shotgun pleading. Plaintiffs improperly attempt to assert  
12 nearly all of their claims against all Defendants collectively and fail to allege facts specific to  
13 each Defendant for each particular claim. As such, the Court DISMISSES the FAC in its entirety  
14 but will give Plaintiffs an opportunity to amend. *Lopez*, 203 F.3d at 1130. In their amended  
15 complaint, Plaintiffs should identify which party did what specifically and which specific facts  
16 are allocated to which claim. *See Hughey*, 2014 WL 5473184, at \*4; *see also McHenry*, 84 F.3d  
17 at 1176 (“[P]laintiffs would be well advised to . . . focus on linking their factual allegations to  
18 actual legal claims.”).

#### 19 IV. CONCLUSION

20 For the foregoing reasons, the Court GRANTS Defendants’ Motions to Dismiss (ECF  
21 Nos. 52, 66) and DISMISSES the FAC in its entirety with leave to amend. Plaintiffs shall file  
22 their amended complaint not later than thirty (30) days from the electronic filing date of this  
23 Order. Defendants shall file their responsive pleading not later than twenty-one (21) days  
24 thereafter.

25 IT IS SO ORDERED.

26 Dated: September 27, 2021

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Troy L. Nunley  
United States District Judge